

Notice of Allowability

Application No.

10/516,474

Examiner

Prieto B.

Applicant(s)

LOBOZ ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 2/16/07.
2. ☒ The allowed claim(s) is/are 1,5 and 7-9.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 2/16/07
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S COMMENTS

1. The category method claims 1-2 set for a process tied to the technological art of task scheduling in a computing system. The method results in a practical application producing a concrete (e.g. repeatably forwards task to an idle processor), useful (e.g. scheduling task) and tangible result (e.g. task are forward to a server process for handling), thus producing a result which is concrete, useful and tangible, as such forms the basis of statutory subject matter under 35 USC 101.

More specifically, the method recites at least one step, which requires use of hardware to accomplish the step. Namely, the act of storing the time and status of a server process, which is used for performing the subsequent determination step. According to the specification, the storing of the most recent finish time and the status of a server in the form of a table is in a database [see 0016]. The inventive concept is the gateway process module which performs the steps of the method of claim 1, although the preamble presented the environment within which the gateway is operating, as best understood, what the applicant seeks a protection is for the gateway process module and not the environment. The gateway process module, besides requiring hardware to store the time and status above mentioned, in order to maintain the table hardware components such as at least a memory, CPU and system clock are required for implementing the storing step used in the recited determination step [see specs 0051-0052]. Thus, although on its face the claimed software modules arranged to operate in an enterprise application environment (claim 2). It is not a computer program (process module) per se, because the program's functionality includes/are physical "things." They are computer components within the statutory process category, as they are "acts" being performed. This claimed computer program/software module does define a structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program's functionality to be realized.

2. The category machine ("system") claim 7, may be applied the same analysis presented above. More particularly, the means plus function language, i.e. the determination means where means plus function language is used to define the characteristics of a machine or manufacture invention, such language must be interpreted to read on only the structures or materials disclosed in the specification and "equivalents thereof" that correspond to the recited function.

In this case, the gateway process module determines the idled server process that most recently finished execution of a previous transaction by reading a table storing the time the server process

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finished processing the last transaction request [see 0038]. Thus, it is understood that this is not a computer program (process module) per se, i.e., because "the system" in this case includes/are physical "things." They are computer components within the statutory process category, as they are "acts" being performed. This claimed computer program/software module does define a structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program's functionality to be realized.

3. The category process ("computer program") claim 8, explicitly recites a computer program arranged, when loaded onto a computer to instruct the computer to operate to perform the steps discussed above.

Thus, [AS BEST UNDERSTOOD] for this language alone, this claimed computer program which does define a structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized.

4. The category machine claim ("computer readable medium"/"computer program product") claim 9, has the same language discussed with respect to claim 8, thus same rationale is applicable.

The specification have been reviewed for explicit definition and/or exemplified implementation of what is/may be "computer readable medium" but the specification is silent in this regards. One of ordinary skill in the art in light of the specification, particularly, in view of requiring hardware component (i.e. a database) to store the time and status above mentioned, including the other hardware described by the specification, e.g. at least a memory, CPU and system clock required for implementing the storing step used in the recited determination step [see specs 0051-0052] would interpreted the claimed "computer readable medium" to encompass storage mediums.

5. Double patent analysis has been performed with respect to *issued patents* having common relationship of inventorship and/or ownership with respect to the above-allowed claims, *none* are found to warrant a double patenting rejection.

6. Other pertinent to applicant's invention was identified as a result of subsequent searches. Pertinent references are noted on enclosed PTO-892

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7. Any comments Applicants considers necessary must be submitted no later than the payment of the Issue Fee and to avoid processing delays, should preferable accompany the Issue Fees. Such submission should be clearly labeled "Comments on Statement of Reasons for Allowance". In event of any post-allowance papers (e.g. IDS, 312 amendment, petition, etc.), Applicant is exhorted to mail papers to the Production Control branch in Publications or faxed to post-allowance papers correspondence branch at (703) 308-5864 to expedite issuing process or call PUB's Customer Service if any questions at (703) 305-8497.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Prieto, B. whose telephone number is (571) 272-3902. The Examiner can normally be reached on Monday-Friday from 6:00 to 3:30 p.m. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's Supervisor, Andrew T. Caldwell can be reached at (571) 272-3868. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3800/4700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system, status information for published application may be obtained from either Private or Public PAIR, for unpublished application Private PAIR only (see <http://pair-direct.uspto.gov> or the Electronic Business Center at 866-217-9197 (toll-free).

Any response to this action should be mailed to:
Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

Hand carried or delivered to:
Customer Service Window located at the Randolph Bldg.
401 Dulany St.
Alexandria, VA 22314

Faxed to the Central Fax Office:
(571) 273-8300 (New Central Fax No.)
Or Telephone:
(571) 272-2100 for TC 2100 Customer Service Office.

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March 8, 2007

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